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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,583	08/29/2003	Daniel P. Topp	TOPP-P7.1-US	8842
21616	7590	10/13/2004	EXAMINER	
LAW OFFICES OF MARK A. GARZIA, P.C. 2058 CHICHESTER AVE BOOTHWYN, PA 19061				PARSLEY, DAVID J
ART UNIT		PAPER NUMBER		
		3643		

DATE MAILED: 10/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/651,583	TOPP, DANIEL P.
	Examiner	Art Unit
	David J Parsley	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 August 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 32-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 32-52 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 29 August 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8-2-04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 8-2-04 and this action is final.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 45 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of the chamber being a refurbished reefer box is not found in applicant's disclosure or the disclosure of the parent application 10/145,184.

Claim Objections

3. Claim 33 is objected to because of the following informalities: the limitations “a means for circulating air within the interior of said chamber” is redundant in that it repeats limitations already claimed in independent claim 32 and therefore should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32-34, 36-40, 42-44, 49 and 51-52 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,716,676 to Imagawa.

Referring to claims 32 and 49, Imagawa discloses an apparatus for eradicating pests comprising, a chamber – at A, having a first end, a second end, a left wall a right wall, a ceiling, sub-ceiling and a floor – see for example figure 2 and 6-7, the ceiling and sub-ceiling forming a plenum, the ceiling and floor being connected to the ends and walls to define an interior volume of the chamber – see for example figures 2-7, a door – proximate - a – see figure 1 and column 3 lines 9-19, positioned at the first end of the chamber, a means for heating the air in the interior of the chamber – at 12,13,22, and the ceiling communicating with the interior of the chamber – see for example figures 1-7, a means for circulating air – at 10a-10d, 11a-11d and/or 22, having an inlet and an outlet, the outlet of the circulating air means connected to the inlet of the heater – see

the ducting in figures 1-2, and the inlet of the circulating air means connected to the ceiling plenum – see figures 2-7, the ceiling plenum communicating with the interior of the chamber to define a continuous volume for allowing air to be moved by the circulating means through the heater into the interior of the chamber, the through the ceiling plenum and back to the circulating means, the circulating means, heating means and ceiling plenum communicating with each other in order to evenly heat/treat any products placed within the interior to a temperature lethal to pests – see for example figures 1-7 and columns 2-5.

Referring to claim 33, Imagawa discloses the means for heating comprises a heater – at 13, and a means for circulating the air – at 10a-10d, 11a-11d and/or 22, within the interior of the chamber – see for example figures 1-2.

Referring to claim 34, Imagawa discloses the heater comprises an indirect fired heating unit – see for example column 3 lines 1-42.

Referring to claim 36, Imagawa discloses the means for circulating the air comprises a fan assembly – at 22 utilizing a fan and electric fan motor – see for example column 3 lines 20-42.

Referring to claim 37, Imagawa discloses the fan assembly – at 22 is a duct axial fan – see for example figure 2.

Referring to claim 38, Imagawa discloses the floor is reinforced to support the weight of any machinery required to load objects into or unload objects from the chamber – see for example figure 2, which shows the floor being of a significant thickness to support heavy weights.

Referring to claim 39, Imagawa discloses the heater has an inlet for inputting air into the heater and an output for outputting heated air, the inlet and outlet communicating with the interior volume of the chamber to heat the interior volume – see for example figures 1-2 at items 2-15.

Referring to claim 40, Imagawa discloses the heater – at 12,13 communicates with the interior volume of the chamber via ducting – see for example figures 1-2.

Referring to claim 42, Imagawa discloses a sub-ceiling – proximate 27 in figure 5 and see figures 6-7, wherein the sub-ceiling and the existing ceiling forms a duct either internal to or external to the chamber – see for example figures 5-7.

Referring to claim 43, Imagawa discloses the means for heating – at 12,13 comprises an inlet for allowing air to be heated for make-up air as required to pressurize the interior of the chamber – see for example at item 12 in figures 1-2.

Referring to claim 44, Imagawa discloses an apparatus for eradicating pests comprising, a chamber – at A, defining an interior volume, the chamber having a means for lifting by external machinery – proximate 10a, 25, the chamber having first and second ends – see for example figures 1-2, a door or doors – proximate – a – see figure 1 and column 3 lines 9-19, positioned at the first end of the chamber, a means for evenly heating – at 12,13, the interior of the chamber to a temperature lethal to pests, the means for heating located either on the exterior or remote of the chamber – at A – see for example figures 1-7 and columns 2-5.

Referring to claim 51, Imagawa discloses a control means – see for example columns 2-5.

Referring to claim 52, Imagawa discloses a primary floor – at 16,17, spaced apart from and above the floor of the chamber – see figures 1-7, the primary floor comprising a plurality of

sections having perforations – see for example figures 3-7, the perforations being sized, shaped and spaced in order to communicate with the means for circulating, the heating means and the ceiling plenum to further improve and distribute heat evenly within the interior of the chamber – see for example figures 3-7 and columns 2-5.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imagawa as applied to claims 32 and 49 above, and further in view of U.S. Patent No. 6,141,901 to Johnson et al.

Referring to claims 35 and 50, Imagawa does not disclose the heater comprises a direct-fired heating unit. Johnson et al. does disclose the heater comprises a direct-fired heating unit – see for example column 1 lines 55-56. Therefore it would have been obvious to one of ordinary skill in the art to take the pest eradicating apparatus of Imagawa and add the direct-fired heating unit of Johnson et al., so as to quickly heat the device to the desired temperature.

Claims 41 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imagawa as applied to claims 32 and 44 above, and further in view of U.S. Patent No. 5,965,185 to Bianco or U.S. Patent No. 6,227,002 to Bianco et al.

Referring to claims 41 and 46-47 Imagawa does not disclose the chamber is a modified trailer having towing means and a tractor wheel attached to the underside of the chamber for facilitating the movement and transportation of the chamber. Bianco and Bianco et al. do disclose the chamber is a modified trailer having towing means and a tractor wheel attached to the underside of the chamber for facilitating the movement and transportation of the chamber – see for example figure 2 of Bianco and figure 1 of Bianco et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Imagawa and add the chamber being a trailer of Bianco or Bianco et al., so as to allow for the device to be movable to different locations as desired by the user. Further making a device portable does not render the claimed invention patentable over the prior art as seen in, *In re Lindberg*, 194 F.2d 732, 93 USPQ 23 (CCPA 1952).

Referring to claim 45, Imagawa does not disclose the chamber is a refurbished reefer box. Bianco and Bianco et al. do disclose the chamber is a box – see proximate 24 of Bianco and proximate – 190 of Bianco et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Imagawa and add the chamber being a box of Bianco or Bianco et al., so as to allow of the chamber to be easily moved for storage or transportation.

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Imagawa as applied to claim 44 above, and further in view of U.S. Patent No. 3,814,315 to Dmysh. Imagawa does not disclose the chamber is a modified trailer to which the heating device is attached. Dmysh does disclose the chamber is a trailer to which the heating device is attached – see for example at items 16-18. Therefore it would have been obvious to one of ordinary skill in the art

to take the device of Imagawa and add the trailer with attached heater of Dmysh, so as to allow for the heater to be movable to different locations.

Response to Arguments

6. Regarding claims 32 and 49, the Imagawa reference US 4716676 does disclose a sub-ceiling and ceiling plenum as seen in figures 2,4 or figures 6-7, where the sub-ceiling is shown proximate items – B, 26, 27 in figure 4 and the sub-ceiling is shown as the upper boundary of the interior chamber in figures 6-7. Further, air-filled spaces or plenums are formed between the sub-ceilings and the ceilings – at the top of items A or A' as seen in figures 2 or 6-7. Merriam-Webster's Collegiate Dictionary 10th edition defines plenum as an air-filled space and as seen in figures 2 and 6-7 of Imagawa the space between the sub-ceilings and ceilings are air filled and thus meet the definition of a plenum.

Regarding claim 44, applicant argues that the chamber having external machinery for lifting is not shown by the Imagawa reference. External machinery for lifting is not claimed what is claimed is a means for lifting by external machinery. External machinery is not a positively recited claim limitation. Further, applicant appears to be referring to the trailer bed – at 96,97 in figures 11-12, as the means for lifting the chamber. However, the trailer bed does not lift the chamber but only elevates the chamber.

Further, as seen in figures 3 and 6-7, a sub-floor – at 16,17 in figure 3 and as seen directly below items – B in figures 6-7, is disclosed by the Imagawa reference. An object does not have to be completely solid to define a floor as seen in the spaces between the rollers – 16 in figure 3 of Imagawa. Applicant's floor as disclosed includes perforations and is not completely solid.

Further, a plenum is formed between the sub-floor and the floor (see the definition of plenum above) as seen in figures 3 and 6-7 of Imagawa. The knowledge of a third party manufacturer has no bearing on the patentability of the claims since it is unknown to what a third party manufacture knows in regard to plenums.

Applicant argues that the Imagawa reference does not disclose machinery entering into the chamber, however machinery entering into the chamber is not claimed by applicant in the claim language and therefore this limitation has no bearing on the patentability of the claims. Applicant claims that the floor must support the weight of machinery used to load objects into the container. The floor of the Imagawa reference as seen in figure 3 handles the entire weight of the chamber, heater and blower and therefore is able to handle any machinery used to load the device with the pallets – at 25.

Regarding claim 43, the interior of the chamber of Imagawa is pressurized in that blowers/fans are used to move the air and cause the air to flow in the chamber. Therefore the chamber has to be pressurized to cause the air to flow. Further, air has a standard pressure of 14.7 psi and is pressurized when not moving. Further, the outside air can be introduced into the device via ducts – at 15 or by the door opening.

Regarding claims 32 and 49, the indirect fired heater of Imagawa is being replaced by the direct fire heater of Johnston et al. US 6141901 and this is merely swapping out different heaters which perform the same function of heating the air.

Regarding claims 41 and 45-47, it is unclear to what applicant is referring with the phrase “other deficiencies of Imagawa.” Therefore it is deemed that the claims stand as being obvious in view of the rejections set forth above in paragraph 5.

Regarding claim 48, the Dmysh reference US 3814315 is used to show the location and not the type of heater and is therefore deemed to render the claim obvious in view of the Imagawa reference.

Regarding the 35 U.S.C. 112 1st paragraph rejection set forth in the previous office action dated 2-2-04, applicant states that page 16 lines 7-8 of applicant's disclosure supports the term "reefer box" used in claim 45. However, applicant's disclosure in page 16 lines 7-8 discloses an insulated trailer and not a reefer box and therefore it is deemed that this rejection still stands and is proper in that a box and a trailer are two different structures.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DP
David Parsley
Patent Examiner
Art Unit 3643

Peter M. Poon
PETER M. POON
SUPERVISORY PATENT EXAMINER

9/7/04